In the High Court of Punjab and Haryana at Chandigarh

C.R. No.3803 of 2005
Date of decision: -09-2006

Thakurdawara Kheri Naga and Others .....Petitioners

Versus

District Collector, Sangrur & Others .....Respondents

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

Present: Ms.Sangeeta Dhanda, Advocate, for the petitioners
Mr.H.S.Gill, DAG Punjab, for respondent No.1.
Mr. Ashok Singla, Advocate, for private respondents.

VINOD K.SHARMA,J.

This order will dispose of Civil Revision No.3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, 4577, 4578, 4579, 4580, 4581, 4582, 4583, 4584, 4585, 4586, 4587, 4588, 4589, 4590, 4591, 4592, 4593, 4594, 4595, 4596, 4597, 4598, 4599, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608, 4609, 4610, 4611, 4612, 4613, 4614, 4615, 4616, 4617 and 4618 of 2005 all titled as Thakurdwara Kheri Naga and others Vs. District Collector and others, as common questions of law and facts are involved in these revision petitions.

The petitioners are registered religious and charitable

institution of Nirankari Vaishnav Sect of Bairagi Sampardai of Hindu religion. In the Thakurdwara of Kheri Naga, idol of Thakurji is installed and worshipped by the worshippers of the said sect. The above mentioned Thakurdwara, a religious institution, is owner in possession of land measuring 25 Bighas 7 Biswas and for the purpose of cultivation of the said land, the same had been given on rent to the tenants on payment of Batai/Share of produce to the religious institution.

It was the case of the petitioners that the tenants had sublet a portion of the tenanted land in contravention of the terms of the tenancy without the permission of the petitioners and since then the sub-tenants are in possession of the religious premises.

The claim of the petitioners was that the respondents are in unauthorised occupation of the religious premises and had cultivated the crop of Kharif 2001 to Rabi 2004, but had not paid any damages/share of produce for unauthorised use and occupation of religious premises.

The petitioners accordingly filed an application under Sections 4 and 6 of the Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997 for recovery of damages for share of produce/Batai for Kharif 2001 to Rabi 2004 for cultivating agricultural land belonging to the petitioners.

The petition was contested by the respondents and they took a preliminary objection about the maintainability of the

application, but the said objection was dismissed in view of the law laid down by this Court in Civil Revision No. 1962 of 2002 titled as Amrik Singh Vs. Jai Si Ram decided on 29th of July 2003.

The second objection taken by the respondents herein was about the fixation of Court fees.

Learned Collector came to the conclusion that as specific rent/damages for use and occupation was claimed and the case was not under Public Premises Act, therefore, ad valorem court fee was payable and the petitioners were accordingly directed to fix court fee on the amount claimed upto 26-07-2005 and in the event of failure to do so, it was ordered that the case would be dismissed.

The case of the petitioners before the learned Collector was that the petition under Sections 4 and 6 of the Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997, was not in the form of suit and, therefore, question of affixing the court fee did not arise. However, on the other hand, the stand of the respondents was that as the matter relates to recovery of rent/damages and the word 'petition' used in the suit, the same could not be treated to be a simple application. It was pleaded that since no exemption from affixing court fee has been granted, then the same has to be affixed as per general law. It was also claimed that as the suit was not filed as forma pauperis, so no exemption can be granted to the petitioners from affixing the court fee. As mentioned earlier, the contention of the respondents was accepted and a direction was issued to affix ad

valorem court fee.

On notice of motion having been issued, the State of Punjab filed reply through the District Collector, Sangrur, respondent No.1 herein, wherein a stand was taken that in fact an objection in regard to non-affixation of court fee prior to 2001 was pointed out in the Internal Audit and thereafter the matter was taken up with the Government and it was the government which directed the collector to comply with the provisions of the Court Fees Act. It was on this ground that the petition prior to 2001 was decided without court fee. It would, thus, be seen that the order passed by the learned Collector was based on the objection raised by the Internal Audit and direction issued by the State Government in this regard.

Ms. Sangeeta Dhanda, learned counsel appearing for the petitioners, challenged the order on the ground that there were no provisions in the Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997 for affixation of court fee and, therefore, there was no occasion for issuance of a direction to affix the court fee on the amount claimed. It was further contended by the learned counsel that in the impugned order, the learned Collector has not specified as to under which provisions of law, the direction was issued to the petitioners to affix the ad valorem court fee.

On the other hand, Mr. Ashok Singla, learned counsel appearing for the private respondents, contended that as the petitioners had claimed arrears of rent from the tenants, then the matter

was covered under Section 7 (XI) of the Court Fees Act, 1870 which reads as under:-

> "XI. Between landlord and tenant.----In the following suits between the landlord and tenant:-
>
> (a) for the delivery by a tenant of the counterpart of a lease,
>
> (b) to enhance the rent of a tenant having a right of occupancy,
>
> (c) for the delivery by a landlord of a lease,
>
> (cc) for the recovery of immovable property from a tenant, including a tenant holding over after the determination of a tenancy,
>
> (d) to contest a notice of ejectment
>
> (e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord, and "and" omitted in U.P.
>
> (f) for abatement of rent ---
>
> (g) for commutation of rent, and
>
> (h) for determination of rent ---
>
> according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint.
>
> (except in the case of suits falling under clause (h) in which according to twice the amount claimed by the plaintiff to be the annual rent – UP"

Whereas Shri H.S.Gill, learned Deputy Advocate General, Punjab, reiterated the stand of the Collector to contend that on the objection by the Internal Audit, the State Government had directed the

collector to comply with the provisions of the Court Fees Act and accordingly, the impugned order is in accordance with law and the directions given by the State Government which deserves to be upheld.

I have heard the learned counsel for the parties and find no force in the contentions raised by the learned for the respondents. A bare reading of Section 7 shows that ad valorem court fee is required to be paid in case of a suit, but would not cover the application made by a person under Sections 4 and 6 of the Punjab Religious Premises & Land (Eviction & Rent Recovery) act, 1997. Sections 4 and 6 of the said Act read as under:-

> "4. Issue of notice to show cause against order of eviction: - (1) on an application made by a Religious Institution, if the Collector is of opinion that any persons are in unauthorised occupation of any religious premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner hereinafter provided, a notice in wiring calling upon all persons concerned to show cause why an order of eviction not be made:
>
> (2) The notice shall -
>
> (a) specify the grounds on which the order of eviction is proposed to be made; and
>
> (b) require all persons concerned that is to say, all persons who are or may be , in occupation of, or claim interest in, the religious premises to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than 10 days from the date of issue thereof.

(3) The Collector shall cause the notice to be sent through a registered post and also affixed on the outer door or some other conspicuous part of the religious premises, or of the estate in which the religious premises are situated whereupon the notice shall be deemed to have been duly given to all persons concerned.

6. Power to recover damages in respect of religious premises as arrears of land revenue. - (1) Where any person is in arrears of rent payable in respect of any religious premises, the Collector may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) where any person is, or has at any time been, in unauthorised occupation of any religious premises the Collector may, having regard to reasonable principles of assessment of damages, assess the damages on account of the use and occupation of such premises and may by order, require that person to pay the damages within such time and in instalments as may be specified in the order.

(3) No order under sub-section (1) of sub-section (2) shall be made against any person until after the issue of a notice, in writing, to the person calling upon him to show cause within such time as may be specified in the notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Collector."

The reading of Section 4 of the aforesaid Act clearly shows that only an application is required to be made by a Religious Institution which cannot be treated to be a suit to bring the case under Section 7 of the Court Fees Act as is sought to be contended by the

learned counsel for the private respondents nor can Collector give much importance to word "petition" used by the petitioner herein as the word used in the Section is an application. Similarly, under Section 6 of The Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997, a duty is cast on the Collector to recover the damages in respect of religious premises as arrears of land revenue. Merely because under Section 7, the Collector has a power to summon and enforce attendance of any person for examining him on oath or hold power to direct the discovery of document, it could not be treated to be a Court dealing with the suit for recovery of rent between the landlord and tenant.

The contention of the learned counsel for the State is also equally misconceived. Firstly, for the reason that the Collector was not bound by the objection raised by the Internal Audit to impose the court fee as has been done in the present case especially when the State Government had nowhere directed that ad valorem court fee was payable on an application made under the Act, rather the direction was issued to deal with the matter under Court Fees Act. Once the application, under 7 of the Court Fees Act was not covered, the Collector had no authority to direct payment of ad valorem court fee. The Punjab Religious Premises & Land (Eviction & Rent Recovery) Act, 1997 is a special Act wherein power is given to the Collector to decide the application moved by a religious institution and that no court fee was payable as none was prescribed. Even under the Court

Fees Act, the matter would fall under Schedule II of the Court Fees Act i.e. under the Miscellaneous Clause, where no ad valorem court fee is payable.

In view of what has been stated above, it is held that no ad valorem court fee is payable on an application moved under the provisions of Sections 4 and 6 of the Punjab Religious Premises & land (Eviction & Rent Recovery) Act, 1997. Consequently, the impugned order is set aside and a direction is given to the Collector to proceed with the matter in accordance with law.

September -09-2006 **(VINOD K.SHARMA)**
'dls' **JUDGE**